75-1566

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE UNITED STATES
SUPREME COURT

LESLIE CATRON CASE,
Plaintiff-Petitioner,

v.

COMMISSIONER OF PATENTS AND TRADEMARKS
and CPC INTERNATIONAL INC.
Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR
EXTRAORDINARY WRIT

and

PETITION FOR WRIT OF MANDAMUS UNDER
28 USC 1651(a)

Leslie Catron Case, pro se
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(617) 729-0384

IN THE UNITED STATES
SUPREME COURT

LESLIE C. CASE,
Plaintiff-Petitioner,
v.
COMMISSIONER OF PATENTS AND TRADEMARKS
and CPC INTERNATIONAL INC.
Respondants.

MOTION FOR LEAVE TO FILE PETITION FOR
EXTRAORDINARY WRIT

Now comes Petitioner LESLIE CATRON CASE, acting pro se, who moves that this court grant him leave to file a petition for an extraordinary writ, specifically an order by this court directing the Hon. W. Arthur Garrity, Jr., Judge, District of Massachusetts, to supervise and oversee compliance by the Commissioner of Patents and Trademarks and CPC International, Inc., a corporation of Delaware, with the standing order of this court, set forth in its decision in Precision Instrument Manufacturing Co. v Automotive Maintenance Machinery Co., 324 U.S. 806.

Respectfully submitted,

Leslie Catron Case

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CASES CITED

In re Potts, Petitioner, 166U.S.265 3,10

Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co. 324 U. S. 806 1,2,3,4,5,6,7,8,9,10,11,12

Sanford Fork and Tool Co.,Petitioner 160 U. S. 247 2,3,10

Sibbald v. United States, 12 Peters 492 2,10

Skillern's Executors v. May's Executors 6 Cranch 268 3,10

STATUTES CITED

28 USC 1361 1,6

28 USC 1651(a) 1,3

IN THE UNITED STATES
SUPREME COURT

LESLIE CATRON CASE,
Plaintiff-Petitioner,
v.
COMMISSIONER OF PATENTS AND TRADEMARKS
and CPC INTERNATIONAL INC.
Respondents.

PETITION FOR WRIT OF MANDAMUS UNDER
28 USC 1651(a)

Your Petitioner, Leslie Catron Case, residing at 14 Lockeland Road, Town of Winchester, Commonwealth of Massachusetts, acting pro se, now appears and petitions this court for a writ of mandamus under 28 USC 1651(a) to the following effect: That this court issue an order directing the Hon. W. Arthur Garrity,Jr., Judge, U. S. Federal District Court, District of Massachusetts, to supervise and oversee the compliance by the Commissioner of Patents and Trademarks and by CPC International, Inc., a corporation of Delaware, with the standing orders of this court set forth in the decision in Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806, in the pertinent matters relating thereto documented in Patent Interference No. 98,302, and Patent Applications Serial No. 105,684, filed January 11, 1971, and Serial No. 606,596, filed January 3,1967.

Your Petitioner submits that he has pursued this matter in the lower courts, by filing a petition for mandamus under 28 USC 1361 in the Federal District Court for the District of Massachusetts, on August 28, 1975. The aforesaid Hon. Judge Garrity heard the case, and on October 30, 1975, dismissed that action from the bench as being statutorily premature. The certified record of that case is being transmitted to this court. Your petitioner then appealed to the Court of Appeals, First Circuit, and that court on February 20, 1976, affirmed the dismissal on procedural grounds, without holding a hearing on the matter, and without affording your Petitioner the opportunity to appear in person to present his case. The certified record of proceedings in that court is being transmitted to this court, and a copy of that court's decision is hereto appended.

Your petitioner, acting as Plaintiff in these proceedings in the lower courts, was seeking to have those courts order compliance with the standing orders handed down by this court in its Precision Instrument decision, as it concerns matters which clearly fall exactly within the scope of that Precision Instrument decision. Those courts denied your petitioner's action, and thus this matter is in condition for the instant petition. But further, by dismissing your petitioner's complaint, the lower courts refused to enforce a standing order of this court. This is clearly a more grievous error than deciding "a federal question in a way in conflict with applicable decisions of this court," and this error immediately gives rise to jurisdiction on writ of certiorari. Your petitioner deems it, however, of sufficient importance, and to be clearly called for by this court's decisions in Sibbald v. United States, 12 Peters 492, Sanford Fork and Tool Co.,Petitioner,

160 U.S. 247, and In re Potts,Petitioner, 166 U.S. 265, to submit the present petition rather than a petition for writ of certiorari.

GROUNDS UNDER WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The question of statutory grounds under which to confer jurisdiction for the hearing of the subject matter of this petition was a central issue in the actions in the courts below. Your petitioner asserted that a standing order of this court is in fact the most immediately enforceable law possible, that no statutory jurisdiction is required by the courts below in order to enforce that standing order, and that in fact the courts below had an unquestionable duty to enforce this court's orders. Skillern's Executors v. May's Executors, 6 Cranch 268.

The circuit court below, in failing to honor your petitioner's arguments, inescapably brought into question the enforcability of this court's Precision Instrument decision

Your petitione. does not presume to embellish this court's Precision Instrument decision by drafting an appendix thereto setting forth the statutory grounds justifying that decision. And your petitioner maintains that the Precision Instrument decision stands by itself as binding, unchallengable, and immediately enforceable law. Your petitioner does suggest, however, that the Precision Instrument decision is itself clearly readable as being based on 28 USC 1651(a) and predecessors thereto.

QUESTIONS PRESENTED FOR REVIEW

Your petitioner's action in seeking this requested extraordinary writ in effect brings before this court a number of questions for review. Those questions, followed by amplifying comments, are:

1. Is the Precision Instrument decision of this court the law of this land, or is it not? Clearly, that decision insofar as it applies here has never been modified or overruled by this court, so that the Precision Instrument decision would seem to be good law.
2. If the Precision Instrument decision is good law, then must it be enforced by the lower courts, and if so, at what stage of proceedings before the Patent Office? The Precision Instrument decision very clearly reads as being immediately applicable to any Patent Office proceeding, but the lower courts in this particular matter have refused to so rule.
3. Who is final arbiter of patent law in this country, this court, or the Patent Office?
4. Can the Patent Office, by refusal to take action, negate and nullify a decision of this court? It is submitted that the Patent Office has in fact nullified and negated the Precision Instrument decision by 30 years of refusal to require compliance therewith, and that in fact the courts below have now ratified that nullification. If this court fails to take action, the nullification of Precision Instrument would seem to be complete.
5. To what legal authority should those who practice in the patent field look for guidance? Your petitioner submits that it appears to be rather well established law in all other areas that this court's

decisions are the final authority on interpretation of the law. But it would appear that in patent matters the Patent Office may effectively interpose its own rules and discretionary action, and that these may in fact supersede and contravene the decisions of this court. Your petitioner submits that this question is a matter of greatest significance to those practicing in the patent field.

6. Is this a nation of law, and is that law applicable to all parties, including the administrative branch of government? This question is fairly raised by the circuit court's refusal to require compliance with the Precision Instrument decision. And this question has a scope reaching far beyond the area of patents and related matters. While the courts below have taken the position that they dismissed your petitioner's complaint as being statutorily premature, what these courts actually did was to decide that apparently good judicial law and a standing order of this court (the Precision Instrument decision) could not be enforced against an administrative agency(the Patent Office).

CONSTITUTIONAL PROVISIONS WHICH THIS CASE INVOLVES

Art. I, Sect. 8, Cl. 8
(The Congress shall have Power)
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Art. III, Sect. 1
The judicial power of the United States, shall be vested in one Supreme Court,. .

Art. III, Sect. 2, Cl. 1
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . .

Art. II, Sect. 3,
(The President) shall take Care that the Laws be faithfully executed, . . .

STATEMENT OF THE CASE

Nature of the Case

The action in the district court below is a petition for mandamus under 28 USC 1361, to require the United States Patent and Trademark Office to comply with the Precision Instrument decision of this court. The action arises from a proceeding in the Patent Office, styled by the Patent Office as Patent Interference No. 98,302 between your petitioner and co-respondant CPC International. There exist clear contradictions and discrepancies in the record of CPC International in that proceeding. Your petitioner attempted without success to have these discrepancies resolved before the Patent Office. Your petitioner has therefore petitioned the district court below to consider the evidence from the Patent Office proceeding record and to take whatever action that court deems necessary to enforce and implement this court's Precision Instrument decision.

Statement of Facts

1. On April 26, 1973, the Patent Office declared an alleged Patent Interference between your Petitioner's U.S. Patent No. 3,510,471 and co-respondant CPC International's application Serial No. 105,684, with CPC International being awarded benefit of the filing date of prior application Serial No. 606,596.

2. On May 9, 1975, your petitioner filed a "Report to the Commissioner under Precision Instrument", calling the attention of the Patent Office to the mandate of the Precision Instrument decision of this court, and setting forth certain clear discrepancies and contradictions in the sworn record of CPC International. The "Report to the Commissioner" is part of the record on file, being Exhibit C of the Patent Office "Motion to Dismiss".

In addition, on April 17, 1975, your petitioner moved in the Patent Office for permission to interrogate Mr. Ed Karraker and on May 22, 1975, petitioned for permission to make such an interrogatory. That petition is Exhibit E of the Patent Office "Motion to Dismiss".

3. On May 7, 1975, the Patent Office denied the motion seeking permission to interrogate.

4. On August 8, 1975, the Patent Office denied the petition to make an interrogatory, and declined to take any action on the "Report to the Commissioner".

This reply of the Patent Office is in the record on file, being Exhibit F of the Patent Office "Motion to Dismiss". In fact, rather than taking the action mandated by this court, the Patent Office on September 19, 1975, issued an order on your petitioner requiring him to show cause why priority of invention should not be awarded to CPC International.

5. CPC International has never filed any evidence or affidavit, nor taken any other action to resolve the contradictions in the record. In fact, CPC International failed to file any evidence, testimony, or documents of any kind during the time period set by the Patent Office for doing so.

6. On August 28, 1975, your petitioner filed suit in the nature of a petition for mandamus, CA 75-3614-G, in the District of Massachusetts, seeking to have the district court issue an order requiring the Patent Office to comply with the letter and spirit of this court's Precision Instrument decision.

7. On October 28, 1975, your petitioner filed a motion for summary judgment in CA 75-3614-G, pointing out that:

a)There appear to be irreconcilable discrepancies and contradictions in the sworn record of CPC International.

b)There is a prima facie case in the sworn record of CPC International showing Mr. Ed Karraker, not the applicant, to be the inventor of the alleged invention.

8. On October 30, 1975, Judge Garrity dismissed the action from the bench at the oral hearing, without handing down a written opinion setting forth the reasons for his action.

9. On February 20, 1976, the circuit court affirmed the dismissal, without holding a hearing on the matter. That opinion is appended hereto.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

This court, in its decision in Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co., 324 U.S. 806, issued a standing order to all parties doing business before the Patent Office, and to the Patent Office. The order was set forth on page 818 of the opinion:

> "Those who have applications pending with the Patent Office or who are parties to Patent Office proceedings have an uncompromising duty to report to it

all facts concerning possible fraud or inequitableness underlying the applications in issue. . . .This duty is not excused by reasonable doubts as to the sufficiency of the proof of the inequitable conduct nor by resort to independent legal advice. Public interest demands that all facts relevant to such matters be submitted formally or informally to the Patent Office, which can then pass upon the sufficiency of the evidence. Only in this way can that agency act to safeguard the public in the first instance against fraudulent patent monopolies. Only in that way can the Patent Office and the public escape from being classed among the 'mute and helpless victims of deception and fraud' ".

In the matter at hand, your petitioner being involved in a matter before the Patent Office, and noting discrepancies and contradictions in the record of another party before the Patent Office, attempted literal and exact compliance with the Precision Instrument decision of this court.

CPC International, Inc., the other party before the Patent Office, not only failed to comply with the mandate of the Precision Instrument decision, but opposed at every opportunity your petitioner's efforts to require compliance.

The Patent Office refused to take any action under the Precision Instrument mandate, refused to require CPC International to comply with that mandate, and frustrated your petitioner's efforts to require compliance with that mandate.

The district court below declined to grant a petition for mandamus requiring

the Patent Office to comply with the mandate of the Precision Instrument decision, and dismissed the petition for mandamus on the grounds that the district court lacked statutory jurisdiction in the matter.

The circuit court below, even though confronted with this court's decisions in Sibbald v. U.S., Sanford Fork and Tool Co. In re Potts, and Skillern's Executors, affirmed the dismissal of your petitioner's petition for mandamus, and alleged without basis that your petitioner's motives were other than set forth in the complaint, and doing so without affording your petitioner an opportunity to be heard in person on this most important matter.

Your petitioner submits that he has duly exhausted all proper preliminaries and now brings before this court a question which clearly calls for answer by this court: "Is the Precision Instrument decision in fact a mandate as it reads, and is it to be complied with and enforced?"

The circuit court below has refused to recognize and enforce the mandate of the Precision Instrument decision. Your petitioner submits that there could hardly be a case more clearly calling forth the words of this court in Sibbald v.U.S.:

> "If the Special Mandate . . .is not obeyed or executed, then the general power given to 'all courts of the United States to issue any writs which are necessary for the exercise of their jurisdictions . . . .fairly arises, and a mandamus, or other appropriate writ will go."

Your petitioner submits that 30 years is a more than sufficient length of time to wait for the Patent Office to establish procedures for administering the Precision Instrument mandate of this court. Those procedures have not been established, and to the contrary, the decision of this court has been resisted, negated and nullified by inaction on the part of the Patent Office. It is time that such procedures be established under appropriate court supervision. Your petitioner submits that the district court below is clearly of such ability and distinction and demonstrated performance in administering mandates of this court, as to be entrusted with the task of supervising and overseeing the implementation and enforcement of this court's Precision Instrument decision.

Your petitioner finally submits that the substance of this petition will not become moot, even in view of the various events and actions which may take place at a later date in the Patent Office. Even though the related interference proceeding has not yet been terminated in the Patent Office, the subject matter of this present petition was never a part of that said proceeding, and is not now before the Patent Office. Thus, there is no reasonable possibility that the Patent Office could reverse itself and deal substantitively with the instant matter. The present issues will thus necessarily be dealt with by the courts, if at all, and there is no certain statutory route whereby to insure substantive judicial consideration of this matter, insofar as it arises under judicial, not statutory, law. In sum, your petitioner submits that if the

Precision Instrument mandate is to be complied with and enforced, the only means whereby this can be accomplished with certainty is by order of this court. And although the Precision Instrument decision clearly calls for consideration of such matters in the first instance, at this point the concern of your petitioner is to insure that these matters will be dealt with in a substantive fashion, and not continue to be ignored and circumvented on procedural grounds.

It is time that the Patent Office and those who appear before it be brought under the rule of law.

Respectfully submitted,

Leslie Catron Case

April ,1976 14 Lockeland Rd.
Winchester,Mass. 01890
(617) 729-0384

AFFIDAVIT OF SERVICE

Leslie C. Case, being under oath, deposes and says that:

1. He is the Petitioner of the accompanying Petition for Extraordinary Writ.

2. He has made service, this day of April, 1976, of the accompanying Motion and Petition for Extraordinary Writ, in the following fashion:
a) He delivered 3 copies of these papers to the Office of the U. S. Attorney, District of Massachusetts.
b) He delivered 3 copies of these papers to the Office of Mr. George L. Greenfield, 185 Devonshire Street, Boston, Massachusetts.
c) He delivered 3 copies of these papers to the clerk of Judge W. Arthur Garrity, Jr.
d) He mailed 3 copies of these papers to the Solicitor General, Department of Justice, Washington, D. C.

3. Further Affiant sayeth not.

Commonwealth of Massachusetts)
County of Middlesex) SS

Before me appeared Leslie C. Case, known to me to be the person described in these papers, who signed the above in my presence, this day of April, 1976.

Notary Public

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 75-1493

LESLIE C. CASE

V.

COMMISSIONER OF PATENTS et al.

REQUEST FOR CERTIFICATION AND TRANSMISSION

The undersigned hereby gives notice that a petition in this case is being filed shortly, and therefore gives notice of a request that the entire record before the Court of Appeals, First Circuit, be certified and transmitted to the Supreme Court.

Signed,

Leslie C Case

Leslie C. Case,
14 Lockeland Rd.
Winchester, Mass.
01890

April 6, 1976

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 75-1493

LESLIE C. CASE,
Plaintiff, Appellant,
v.
COMMISSIONER OF PATENTS AND TRADEMARKS
ET AL, Defendants, Appellees.

Before COFFIN, Chief Judge,
McENTEE and CAMPBELL, Circuit Judges.

MEMORANDUM AND ORDER
Entered February 20, 1976

While this action purports to seek mandamus pursuant to 28 U.S.C. 1361, it is readily apparent that in fact plaintiff-appellant wishes us to review an interlocutory decision in the Patent Office. The proper jurisdictional basis for review of patent interference proceedings by the District Court is 35 U.S.C. 146, a statutory section which cannot be invoked absent a final decision on the question of priority of invention. See Sanford v. Kepner, 344 U.S. 13 (1952); Phillips Petroleum Company v. Brenner, 383 F.2d 514 (D.C. Cir. 1967).

The order of the District Court is affirmed.

By the Court:
/s/Dana H. Gallup
Clerk

(cc: Ms. Case and Messrs. Brown and Greenfield.)